

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KENEXA TECHNOLOGY, INC.,

Plaintiff

v.

TALEO CORPORATION,

Defendant.

Civil Action No.: _____

Jury Trial Demanded

COMPLAINT

The Parties

1. Plaintiff, Kenexa Technology, Inc. (“Kenexa”) is a Pennsylvania corporation having its corporate headquarters at 650 East Swedesford Road, Wayne, Pennsylvania 19087.

2. On information and belief, Defendant Taleo Corporation (“Taleo”) is a Delaware corporation having a principal place of business at 4140 Dublin Boulevard, Suite 400, Dublin, California 94568.

3. This is an action for tortious interference with contractual relations, unfair competition, unfair trade practices, and unjust enrichment.

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332.

5. This Court has personal jurisdiction over Taleo, which is a Delaware corporation.

BACKGROUND

6. In or about April 2008, Kenexa entered into a contract with UCB, Inc. (“UCB”) – an entity having a place of business at 1950 Lake Park Drive, Smyrna, Georgia 30080 – to provide recruiting services to UCB.

7. In the performance of the contract (“Contract”) between Kenexa and UCB, certain Kenexa employees (“the Kenexa Employees”) would need access to UCB’s computer system (the “UCB Computer System”).

8. Taleo is aware of the Contract.

9. Taleo is aware that Kenexa cannot perform the Contract, unless the Kenexa Employees can access the UCB Computer System.

10. Taleo is aware that UCB cannot perform the Contract, unless the Kenexa Employees can access the UCB Computer System.

11. Upon information and belief, UCB is a customer of Taleo and the UCB Computer System uses computer software provided to UCB by Taleo.

12. Taleo has prevented and is preventing the Kenexa Employees – who would need to operate the UCB Computer System in the performance of the Contract – from accessing the UCB Computer System, at least by refusing to grant permissions and/or passwords needed for the Kenexa employees to access the UCB Computer System.

13. Taleo’s conduct in preventing the Kenexa Employees from accessing the UCB Computer System has prevented Kenexa from performing its duties under the Contract.

14. Taleo’s conduct in preventing the Kenexa Employees from accessing the UCB Computer System has prevented UCB from performing its duties under the Contract.

15. On information and belief, Taleo’s conduct in preventing the Kenexa Employees from accessing the UCB Computer System has been and continues to be motivated by Taleo’s intent to harm Kenexa’s business.

16. As a consequence of Taleo’s conduct described herein, Kenexa has sustained monetary injury in excess of \$75,000, exclusive of interest and costs.

17. As a consequence of Taleo's conduct described herein, Kenexa's business has been harmed.

18. Taleo is presently engaged in a lawsuit pending in this Judicial District – Kenexa BrassRing, Inc. v. Taleo Corporation, C.A. No. 07-521-SLR (“the Patent Infringement Lawsuit”) wherein Kenexa's wholly owned subsidiary – Kenexa BrassRing, Inc. (“BrassRing”) – has sued Taleo for Taleo's infringement of BrassRing's patent rights.

19. On information and belief, Taleo is and has been refusing to allow the Kenexa Employees to access the UCB Computer System, in order to enhance its negotiation position with regard to the Patent Infringement Lawsuit.

20. Before the complaint in the Patent Infringement Lawsuit was filed, Taleo expressed that it would allow employees of Kenexa to have access to at least one computer system of a Taleo customer, which computer system used computer software provided to the customer by Taleo.

21. Taleo has made misrepresentations to UCB regarding the reasons for preventing the Kenexa Employees from accessing the UCB Computer System.

22. Taleo has misrepresented the potential for injury to the value of Taleo's business, if the Kenexa Employees were permitted to access the UCB Computer System.

23. Taleo has also made misrepresentations to UCB regarding Kenexa's responsiveness in addressing the dispute regarding access to the UCB Computer System and regarding Kenexa's willingness to resolve the dispute.

24. Taleo's false statements and misrepresentations of fact have harmed Kenexa's business and reputation and have disparaged Kenexa and Kenexa's services.

TORTIOUS INTERFERENCE WITH CONTRACT

25. Kenexa repeats and realleges the foregoing paragraphs.

26. As alleged herein, Taleo has been and is knowingly interfering with the Contract.

27. Taleo's interference with the Contract has been intentional and improper in motive and/or means.

28. Taleo's tortious interference with the Contract is continuing, and is and has been willful, intentional, knowing and malicious.

29. Taleo's interference with the Contract has caused and will continue to cause Kenexa to suffer substantial damages.

30. Taleo's interference with the Contract has caused and will continue to cause Kenexa to suffer irreparable harm for which there is no adequate remedy at law.

UNFAIR COMPETITION

31. Kenexa repeats and realleges the foregoing paragraphs.

32. As alleged herein, Taleo has been and is engaging in conduct that constitutes unfair competition.

33. Taleo's unfair competition is and has been willful, intentional, knowing and malicious.

34. Taleo's unfair competition has caused and will continue to cause Kenexa to suffer substantial damages.

35. Taleo's unfair competition has caused and will continue to cause Kenexa to suffer irreparable harm for which there is no adequate remedy at law.

UNFAIR TRADE PRACTICES

36. Kenexa repeats and realleges the foregoing paragraphs.

37. As alleged herein, Taleo has been and is engaging in conduct that constitutes unfair trade practices, including unfair trade practices within the meaning of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§201-1 *et seq.*

38. Taleo has engaged in unfair trade practices willfully, intentionally, knowingly and maliciously.

39. Taleo's unfair trade practices have caused and will continue to cause Kenexa to suffer substantial damages.

40. Taleo's unfair trade practices have caused and will continue to cause Kenexa to suffer irreparable harm for which there is no adequate remedy at law.

UNJUST ENRICHMENT

41. Kenexa repeats and realleges the foregoing paragraphs.

42. Taleo has been unjustly enriched, monetarily and/or otherwise, at least by its wrongful conduct described herein.

43. As a result of Taleo's unjust enrichment, Kenexa has suffered substantial damages.

RELIEF REQUESTED

WHEREFORE, Kenexa respectfully requests that this Court:

1. Award Kenexa compensatory, unjust enrichment and punitive damages;
2. Award Kenexa treble damages, in accord with the Pennsylvania Unfair Trade Practices and Consumer Protection Law;
3. Order Taleo to pay prejudgment and post-judgment interest for all damages awarded;
4. Enjoin Taleo and its affiliates, subsidiaries, officers, directors, employees, agents,

representatives, licensees, successors, assigns, and all those acting for any of them or on their behalf, or acting in concert with them from performing the unlawful conduct described herein;

5. Award Kenexa its costs and reasonable attorneys' fees; and
6. Award Kenexa such other relief as the Court deems just and proper.


JURY DEMAND

Kenexa demands a trial by jury on all issues so triable.

OF COUNSEL:

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Dated: June 25, 2008



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JS 44 (Rev 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provide by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

Kenexa Technology, Inc.

(b) County of Residence of First Listed Plaintiff Delaware (EXCEPT IN U S PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Frederick L. Cottrell, III, Esquire
Richards, Layton & Finger
One Rodney Square - P O Box 551
Wilmington, DE 19899
302-651-7700

DEFENDANTS

Taleo Corporation

County of Residence of First Listed Defendant:
(IN U S PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 01 U.S. Government Plaintiff
☐ 02 U.S. Government Defendant
- ☐ 04 Federal Question (U.S. Government Not a Party)
☒ 04 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|--------------------------|--------------------------|--|-------------------------------------|-------------------------------------|
| Citizen of This State | <input type="radio"/> 01 | <input type="radio"/> 01 | Incorporated <i>or</i> Principal Place of Business in This State | <input type="radio"/> 04 | <input checked="" type="radio"/> 04 |
| Citizen of Another State | <input type="radio"/> 02 | <input type="radio"/> 02 | Incorporated <i>and</i> Principal Place of Business in Another State | <input checked="" type="radio"/> 05 | <input type="radio"/> 05 |
| Citizen or Subject of a Foreign Country | <input type="radio"/> 03 | <input type="radio"/> 03 | Foreign Nation | <input type="radio"/> 06 | <input type="radio"/> 06 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FOREFEITURE/PENALTY	ANKRUPTCY	OTHER STATUTES
<input type="radio"/> 110 Insurance <input type="radio"/> 120 Marine <input type="radio"/> 130 Miller Act <input type="radio"/> 140 Negotiable Instrument <input type="radio"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="radio"/> 151 Medicare Act <input type="radio"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="radio"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="radio"/> 160 Stockholders' Suits <input type="radio"/> 190 Other Contract <input type="radio"/> 195 Contract Product Liability <input type="radio"/> 196 Franchise	PERSONAL INJURY <input type="radio"/> 310 Airplane <input type="radio"/> 315 Airplane Product Liability <input type="radio"/> 320 Assault, Libel & Slander <input type="radio"/> 330 Federal Employers' Liability <input type="radio"/> 340 Marine <input type="radio"/> 345 Marine Product Liability <input type="radio"/> 350 Motor Vehicle <input type="radio"/> 355 Motor Vehicle Product Liability <input type="radio"/> 360 Other Personal Injury	PERSONAL INJURY <input type="radio"/> 362 Personal Injury - Med. Malpractice <input type="radio"/> 365 Personal Injury - Product Liability <input type="radio"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="radio"/> 370 Other Fraud <input type="radio"/> 371 Truth in Lending <input type="radio"/> 380 Other Personal Property Damage <input type="radio"/> 385 Property Damage Product Liability	<input type="radio"/> 610 Agriculture <input type="radio"/> 620 Other Food & Drug <input type="radio"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="radio"/> 630 Liquor Laws <input type="radio"/> 640 R.R. & Truck <input type="radio"/> 650 Airline Regs. <input type="radio"/> 660 Occupational Safety/Health <input type="radio"/> 690 Other	<input type="radio"/> 422 Appeal 28 USC 158 <input type="radio"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="radio"/> 820 Copyrights <input type="radio"/> 830 Patent <input type="radio"/> 840 Trademark
REAL PROPERTY <input type="radio"/> 210 Land Condemnation <input type="radio"/> 220 Foreclosure <input type="radio"/> 230 Rent Lease & Ejectment <input type="radio"/> 240 Torts to Land <input type="radio"/> 245 Tort Product Liability <input type="radio"/> 290 All Other Real Property	CIVIL RIGHTS <input type="radio"/> 441 Voting <input type="radio"/> 442 Employment <input type="radio"/> 443 Housing/Accommodations <input type="radio"/> 444 Welfare <input type="radio"/> 445 Amer. w/Disabilities - Employment <input type="radio"/> 446 Amer. w/Disabilities - Other <input type="radio"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="radio"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="radio"/> 530 General <input type="radio"/> 535 Death Penalty <input type="radio"/> 540 Mandamus & Other <input type="radio"/> 550 Civil Rights <input type="radio"/> 555 Prison Condition	LABOR <input type="radio"/> 710 Fair Labor Standards Act <input type="radio"/> 720 Labor/Mgmt. Relations <input type="radio"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="radio"/> 740 Railway Labor Act <input type="radio"/> 790 Other Labor Litigation <input type="radio"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="radio"/> 462 Naturalization Application <input type="radio"/> 463 Habeas Corpus - Alien Detainee <input type="radio"/> 465 Other Immigration Actions	<input type="radio"/> 400 State Reapportionment <input type="radio"/> 410 Antitrust <input type="radio"/> 430 Banks and Banking <input type="radio"/> 450 Commerce <input type="radio"/> 460 Deportation <input type="radio"/> 470 Racketeer Influenced and Corrupt Organizations <input type="radio"/> 480 Consumer Credit <input type="radio"/> 490 Cable/Sat TV <input type="radio"/> 810 Selective Service <input type="radio"/> 850 Securities/Commodities/Exchange <input type="radio"/> 875 Customer Challenge 12 USC 3410 <input type="radio"/> 890 Other Statutory Actions <input type="radio"/> 891 Agricultural Acts <input type="radio"/> 892 Economic Stabilization Act <input type="radio"/> 893 Environmental Matters <input type="radio"/> 894 Energy Allocation Act <input type="radio"/> 895 Freedom of Information Act <input type="radio"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="radio"/> 950 Constitutionality of State Statutes
			FEDERAL TAX SUITS <input type="radio"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="radio"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 01 Original Proceeding
☐ 02 Removed from State Court
☐ 03 Remanded from Appellate Court
☐ 04 Reinstated or Reopened
☐ 05 Transferred from another district (specify)
☐ 06 Multidistrict Litigation
☐ 07 Judge from Magistrate Judgment

Appeal to District

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

VI. CAUSE OF ACTION 28 U.S.C. § 1332

Brief description of cause:

Action for unfair competition, unfair trade practices and tortious interference

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE SUE L. ROBINSON

DOCKET NUMBER 07-521-SLR

DATE June 25, 2008 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IF _____ JUDGE _____ MAG JUDGE _____
 RLF1-3296555-1

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U. S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U. S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

I. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F R C P, which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

I. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

I. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

II. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.C.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Primary Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

III. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.